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☐ No hearing is set.
☐ Hearing is set:
 Date: _____
 Time: _____
 Judge/Calendar: _____

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

WASHINGTON FAMILIES STANDING
TOGETHER and ANNE LEVINSON,

Plaintiffs,

v.

SECRETARY OF STATE SAM REED, in
his official capacity, and PROTECT
MARRIAGE WASHINGTON,

Defendants.

No. _____

COMPLAINT

I. INTRODUCTION

1. In this action, plaintiffs Washington Families ("Washington Families") and Anne Levinson (together, "Plaintiffs") seek relief under RCW 29A.72.240 and otherwise to address three category of errors committed by the Secretary of State Sam Reed ("Secretary") in the process of certifying Referendum 71 for the ballot. The Court should enter an injunction preventing the Secretary with proceeding to place Referendum 71 on the ballot. Referendum 71 seeks to prevent Engrossed Second Substitute Senate Bill 5688 from taking effect, a bill that expanded the rights, responsibilities, and obligations under Washington

COMPLAINT – 1

1 State's domestic partnership law, RCW 26.60, for registered same-sex and senior domestic
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3 partners.

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5 2. RCW 29A.72.240 provides:

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7 Any citizen dissatisfied with the determination of the secretary of state that
8 an initiative or referendum petition contains or does not contain the requisite
9 number of signatures of legal voters may, within five days after such
10 determination, apply to the superior court of Thurston county for a citation
11 requiring the secretary of state to submit the petition to said court for
12 examination, and for a writ of mandate compelling the certification of the
13 measure and petition, or for an injunction to prevent the certification thereof
14 to the legislature, as the case may be. Such application and all proceedings
15 had thereunder shall take precedence over other cases and shall be speedily
16 heard and determined.

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18 3. The referendum is a fundamental right retained by the citizens of Washington
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20 to ensure that their government represents the interests of the people. While the referendum
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22 was one of the great progressive era reforms designed to check the influence of money on
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24 the levers of government, things have changed. Special interests now use paid signature-
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26 gatherers to collect sufficient signatures to place referenda and initiatives on the ballot. This
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28 leads to an increased risk of signature fraud and the potential for invalid signatures to be
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30 submitted in support of a referendum. In Washington State, this risk is far from academic.
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32 Washington's history is replete with incidents of election fraud. Indeed, in 1994 and 1995—
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34 the first two years after Washington first allowed paid signature-gatherers—it came to light
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36 that signature-gatherers had forged hundreds of signatures on initiative petitions.

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38 4. Plaintiffs bring this action because the Secretary has not abided by the
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40 requirements of State law enacted by the Legislature expressly for the purpose of ensuring
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42 the integrity of the initiative and referendum process. First, the Secretary erred in accepting
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44 petitions that did not comply with the statutory mandate that the signature-gatherer declare
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46 under penalty of law the absence of fraud in obtaining the signatures on the petition.
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1 Second, the Secretary violated both the Washington Constitution and legislative enactments
2 following therefrom in accepting signatures from individuals not registered to vote when
3 they signed the petition. Third, the Secretary erroneously accepted signatures as matches to
4 registered voters, and, at least in part due to the maneuvers of the referendum's proponent,
5 Protect Marriage Washington ("PMW"), Plaintiffs have been prevented from doing a more
6 thorough investigation into this flawed verification process.
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12 5. Plaintiffs are particularly troubled by these issues given that they arise in the
13 context of an effort by PMW and affiliated special interest groups to deny basic civil rights
14 to citizens of Washington. The Legislature enacted Engrossed Second Substitute Senate Bill
15 5688 during the last legislative session, and it would be effective by now but for the filing of
16 the referendum. Furthermore, PMW has failed to disclose or allow access to important
17 public information, thereby preventing the SOS or the public from investigating further into
18 observations as to the actions of signature-gatherers and as to the number and reasons for
19 mismatched signatures being accepted.
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29 II. PARTIES

30 6. Plaintiff Washington Families is a statewide campaign, endorsed by more
31 than 150 non-profit and faith-based organizations that all support Engrossed Second
32 Substitute Senate Bill 5688 ("the enhanced domestic partnership law"), that is the subject of
33 Referendum 71, and which is forestalled from going into effect so long as Referendum 71 is
34 pending.
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41 7. Plaintiff Anne Levinson is a citizen of Washington, a resident of King
42 County, a lawful registered voter in King County, and an elector of Washington State as that
43 term is defined in RCW 29A.04.061.
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1 8. Defendant Sam Reed is, and at all times relevant to this complaint was, the
2 Secretary of State for the State of Washington. He is the chief election officer of
3 Washington State.
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5 9. Defendant Protect Marriage Washington ("PMW") is an organization that
6 seeks to overturn the enhanced domestic partnership law and is the sponsor of
7 Referendum 71.
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10 III. JURISDICTION AND VENUE

11 10. The Court has jurisdiction over this matter and venue is proper in this Court
12 pursuant to RCW 29A.72.240 (specifying Thurston County as venue for actions thereunder)
13 and RCW 4.12.020(2) (as Defendant is a public officer of the State of Washington and
14 Plaintiffs' causes of actions arose in part in Thurston County).
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17 IV. FACTS

18 Referendum 71

19 11. Referendum 71 is a proposed ballot measure that seeks a statewide vote in an
20 effort to overturn the enhanced domestic partnership law, which would expand rights,
21 responsibilities, and obligations under Washington State's domestic partnership law, RCW
22 26.60 ("the original domestic partnership law"), for registered same-sex and senior citizen
23 domestic partners.
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25 12. On May 18, 2009, Governor Christine Gregoire signed the enhanced
26 domestic partnership bill (Engrossed Second Substitute Senate Bill 5688) into law. The
27 enhanced domestic partnership law provides critical protections to thousands of Washington
28 families,¹ such as the right to take sick leave to care for an ill partner. Most provisions of
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39 ¹ There are 5,846 Domestic Partnership registrations as of August 12, 2009, in every county in the
40 State. <http://www.secstate.wa.gov/corps/domesticpartnerships/>.
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1 the enhanced domestic partnership law would have gone into effect on July 26, 2009, if
2 PMW had not filed the proposed Referendum 71 on July 25, 2009.

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5 **PMW's Misconduct In Gathering Signatures and Submitting Petitions**
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7 13. PMW, together with affiliated special interest groups, has sponsored the
8 effort to get Referendum 71 on the ballot. To accomplish their goals, the referendum's
9 sponsors have engaged in unlawful procedures. For instance, some paid signature-gatherers
10 circulating petitions to place Referendum 71 used deceptive practices to induce voters who
11 supported the enhanced domestic partnership law to sign Referendum 71 petitions, and the
12 petition itself contained false and misleading information in pronounced type at the top.
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19 14. In addition, thousands of PMW petitions did not comply with RCW
20 29A.72.130, which requires signature-gatherers to personally attest to the fact that all signers
21 of a petition signed knowingly, willingly, and without inducement (the "Required Oath").
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25 15. PMW was plainly aware of Washington's statutory requirement that
26 signature-gatherers place their name in and sign the declaration required by RCW
27 29A.72.130 that was printed on the back of each petition they circulated. In prominent bold
28 print, and without equivocation, Referendum 71 signature-gatherers were instructed on the
29 petition that "[b]efore you mail in your petition, make sure to print and sign your name
30 here," alongside a large black arrow indicating a line specifically provided for the signature
31 gatherer's signature.
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39 16. Signature-gatherers were also unambiguously instructed "Be sure to read
40 instructions on proper signature gathering. *Remember this includes your signature on the*
41 *back of the petition.*" (Emphasis added). Signature-gatherers were expressly cautioned that
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1 state regs, it will be thrown out " and that this meant that "[a]ll Signature Gather[er]s must
2 sign the back of their petition form."
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5 17. When PMW recognized that its signature-gatherers had not complied with
6 this requirement, and thus they did not have the necessary declaration from the circulator for
7 many of the petitions, PMW compounded the problem by committing clear fraud by
8 stamping--while SOS staff observed--the PMW campaign manager's name, Larry Stickney,
9 to thousands of the petitions. In so doing, they hid the true name of the signature-gatherer
10 and Mr. Stickney personally attested to facts of which he had no personal knowledge, and
11 vitiated the purpose of the anti-fraud statute.
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15 18. Pursuant to RCW 29A.72.130, an individual who signs the signature-gatherer
16 declaration must attest that he or she personally circulated the petition. It is a violation of
17 State law to sign a petition circulated by another. Obviously, one cannot truthfully attest
18 "under penalty of law" to the required statements if the signer did not personally circulate
19 the petition and does not have personal knowledge of the relevant facts. Nor can one validly
20 sign the declaration by signing *someone else's* name.
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23 **The Secretary Accepts Petitions in Violation of State Law Intended to Prevent Fraud**

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25 19. The Secretary is responsible for overseeing the determination of whether a
26 referendum qualifies for the ballot. Striving toward the laudable goal of voter
27 enfranchisement, the Secretary has made it a priority to accept signatures whenever possible.
28 Unfortunately, in so doing, the Secretary did not comply with certain statutory requirements
29 which the Legislature has deemed necessary to prevent fraud.
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33 20. The SOS began its signature verification check by binding multiple petitions
34 into "volumes" to facilitate the verification process. In thousands of instances, the SOS
35 accepted petitions that did not include the anti-fraud declaration, but in others, the SOS
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1 rejected petitions that did not attach a "readable, full, true and correct copy of the proposed
2 measure printed on the reverse side of the petition" as required by RCW 29A.72.100. Like
3 the signature-gatherer declaration, the "full text" requirement is intended to prevent fraud,
4 and ensure that potential signatories can intelligently evaluate what they are asked to sign.
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9 21. During the verification process, an observer for PMW, in violation of SOS
10 rules, disclosed the name of a signature that had been rejected as not duly registered ('not
11 found') to the PMW campaign, and the PMW campaign demanded that the SOS re-check
12 that signature. The SOS realized that it had been using a copy of the statewide voter
13 registration database that was only current through June 19, 2009. Concerned that voters
14 who registered between June 19 and July 25 might be rejected in error, the SOS did not
15 switch all checkers to the current data base but instead added a third group of checkers to
16 look again for any signatures rejected as 'not found' using a "live" version of the database.
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25 22. While the purpose of this third check of rejected signatures was to be limited
26 to the laudable goal of ensuring that if a signer timely registered to vote between June 19
27 and July 25, he or she would be accepted as a validly registered voter, the SOS implemented
28 this change in a way that resulted in more than 1,700 signatures that had previously been
29 rejected by two rounds of checkers now being accepted.
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35 **Washington Families Files An Action in King County to Prevent the Secretary From**
36 **Certifying Referendum 71 Based on the Secretary's Legal Errors**
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38 23. Washington Families made every effort to work within the process
39 established by the SOS to have these issues addressed. The Secretary disagreed as to his
40 obligation to reject the defective petitions or to take other corrective action, relying instead
41 on a flawed opinion of the Washington Attorney General.
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1 24. Plaintiffs filed an action in King County Superior Court seeking writs of
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3 mandamus, prohibition and certiorari, which would compel the Secretary to reject petitions
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5 where the declaration was not signed or signed by someone other than the signature-gatherer
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7 and to reject signatures of non-legal voters, both clear violations of State law. Plaintiffs
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9 simultaneously moved for injunctive relief to prevent the Secretary from certifying
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11 Referendum 71 for the ballot. Judge Julie Spector of the King County Superior Court held
12
13 a hearing on this motion on August 31, 2009. At the conclusion of this hearing, Judge
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15 Spector indicated that she intended to issue a ruling in the morning of September 2, 2009.

16 25. The Secretary then announced that he intended to certify Referendum 71 in
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18 the pre-business hours (specifically, at 8:00 a.m.) on the morning of September 2, 2009.
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20 The Secretary, in fact, has now certified Referendum 71.

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23 **Judge Spector Agreed that There Were Serious Issues with PMW's Conduct and the**
24 **Secretary's Acceptance of Deficient Petitions and Signatures, but Directed Plaintiffs to**
25 **File in Thurston County under RCW 29A.72.240**
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27 26. Judge Spector issued her ruling at 8:09 a.m. on September 2, 2009. A true
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29 and correct copy of her Order is attached hereto as Exhibit A.

30 27. In the Order, Judge Spector made the following findings of fact (citations
31
32 omitted):
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35 On July 25, 2009, [PMW] submitted approximately 137,883
36 signatures in support of R-71 to the Secretary of State's office.
37 Under RCW 29A.72.150, a referendum requires 4% of the
38 electors from the last gubernatorial election to sign petitions to
39 qualify for the ballot. The Secretary of State determined this
40 number to be 120,577. As of August 31, 2009, the Secretary
41 of State had approved 121,486 signatures in support of R-71.
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43 On July 25, 2009, proponents of R-71 organized the boxes of
44 petitions at the bottom of the Capitol stairs in Olympia. In
45 doing so, they realized that many signature-gatherers had not
46 filled out the declaration on the back of the petition. In
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1 response to the missing signatures, PMW members obtained a
2 signature stamp from Lawrence Stickney, the campaign
3 manager for PMW, and stamped his name and signature to
4 many of the petitions with blank declarations. It is estimated
5 that over 2,500 petitions lacked signature gatherers' signatures.

6
7 The Secretary of State accepted 33,966 signatures on 2,508
8 petitions where the declaration was stamped with
9 Mr. Stickney's name after the fact. The Secretary of State also
10 accepted 2,058 signatures on 162 petitions where the
11 signature-gatherer declaration was left entirely blank.

12
13 PMW submitted so few signatures above the minimum
14 required that the Secretary of State was not confident that a
15 random statistical sample would accurately demonstrate
16 whether there were sufficient valid signatures to certify the
17 measure for the ballot. As a result, the Secretary of State
18 determined that a 100% check of all signatures submitted on
19 July 25, 2009 would be conducted.

20
21 On July 31, 2009, the Secretary of State began to determine
22 how many valid signatures had been submitted. During the
23 check, SOS staff first compared the signatures on the petitions
24 to signatures on file in the statewide voter registration
25 database to determine if each signature was that of a registered
26 voter. Signatures rejected in the initial check were then
27 submitted to a "master checker," someone with more
28 experience who reviewed whether they had been correctly
29 rejected. Then, SOS staff checked the remaining rejected
30 signatures an additional time against an updated list of voters
31 who had registered after June 19, 2009, and throughout the
32 verification process.

33
34 The Secretary of State specifically instructed staff to accept
35 signatures regardless of voter registration date. As a result, a
36 number of signatures were accepted from voters who were not
37 registered at the time they signed the petitions. Some had
38 registered after the R-71 petitions were filed.

39
40 28. Judge Spector then proceeded to recognize Plaintiffs' concerns with these
41 actions of the Secretary. Specifically, her Order stated (citations omitted):
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43
44 The Secretary of State concedes that he instructed his staff to
45 accept signatures of voters who were not registered when they
46 signed the petition. The court notes that the plain language of
47 the Washington State Constitution and the Revised Code of

1 Washington requires voters to be registered *before* signing.
2 While it may be common practice for individuals to register
3 simultaneously with signing referendum petitions, and it may
4 even be good policy, that does not mean that the practice is in
5 accordance with Washington law. ...

6
7 [PMW] also admits that their members stamped the
8 declarations of thousands of petitions with Mr. Stickney's
9 signature before filing the referendum petitions with the
10 Secretary of State. Likewise, the Secretary of State concedes
11 that he has accepted more than 35,000 signatures where the
12 signature-gatherer's declaration was either left blank or
13 stamped *en masse* with Mr. Stickney's signature. In making
14 this determination, the Secretary of State has relied on an
15 opinion by the Attorney General issued in 2006. That opinion
16 states that RCW 29A.72.130 requires not that the signature-
17 gatherer actually sign the declaration, but only that the
18 declaration be printed on the back of each petition.
19 Op.Atty.Gen.2006, No. 13. Based on the statute's plain
20 language and the legislative history, this essentially renders
21 this declaration requirement meaningless. In adherence with
22 the opinion of the Attorney General, the Secretary of State
23 requires only a signature block to be printed on each petition,
24 but does not require the same to be signed. ...

25
26 Further, neither the Secretary of State nor PMW/Intervenor
27 has addressed the plaintiffs' allegations of fraud whereby
28 individuals were allegedly deceived into signing the petitions.
29 Specifically, there are allegations that signature-gatherers told
30 some individuals that the referendum would protect domestic
31 partnerships when in fact just the opposite was true. In
32 addition, the highlights at the top of the petitions contain
33 apparent falsehoods, hyperbole, and unsubstantiated
34 claims.fn1

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36 [fn1. "If same-sex marriage becomes law, public schools K-
37 12 will be forced to teach that same-sex marriage and
38 homosexuality are normal ... even over the objections of
39 parents. Sign R-71 to protect children."]

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41 The required signature-gatherer's declaration swears that the
42 individuals who signed the petition did so "knowingly."fn2 It
43 is unclear whether a signature-gatherer can swear that an
44 individual signer has signed the petition "knowingly" when
45 the signature-gatherer has allegedly misrepresented the
46 contents of the petition. Neither the Secretary of State nor
47 PMW/Intervenor has answered this question.

1
2 [fn2. "I, _____ swear or affirm under penalty of law that I
3 circulated this sheet of the foregoing petition, and that, to the
4 best of my knowledge, every person who signed this sheet of
5 the foregoing petition *knowingly* and without any
6 compensation or promise of compensation willingly signed his
7 or her true name and that the information provided therewith
8 is true and correct." RCW 29A.72.130 (emphasis added).]
9

10 . . . It is conceded that the number of signatures represented by
11 these inadequate petitions is significant. Without them, the
12 Secretary of State could not certify Referendum 71 for the
13 ballot.
14

15 (Emphasis in original)

16 29. The Secretary argued to the King County Superior Court that the singular
17 avenue for raising plaintiffs' allegations was in Thurston County Superior Court pursuant to
18 RCW 29A.72.240, and only after the Secretary has certified the referendum to the ballot.
19 Judge Spector agreed with the Secretary's position, concluding "Only after certification can
20 opponents of a referendum challenge it in court, and then only in compliance with RCW
21 29A.72.240."
22

23 30. Plaintiffs therefore file this Complaint in this Court. Through this action,
24 Plaintiffs seek an order declaring that, based on the findings as set forth above and the
25 additional allegations set forth below, the Secretary's certification of Referendum 71 to the
26 ballot was unlawful and should be enjoined.
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28 31. This Court has the power and the duty to order the Secretary to faithfully
29 apply the law, and should exercise that power to protect the integrity of the referendum
30 process. Nowhere is this Court's duty to do so more urgent or necessary than where, as here,
31 a referendum without the support of the requisite number of legal voters seeks to take away
32 basic civil rights recognized by our Legislature and signed into law by the Governor of our
33 State. Eliminating the petitions not signed by the signature-gatherer alone would leave the
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1 petition several thousand signatures short of the required 120,577. The referendum would
2 also fall short if signatures of voters not registered at the time they signed were not accepted.
3 While it is true that the law affords the Secretary a broad range of discretionary decision-
4 making, that breadth of discretion cannot include intentional disregard for enforcement of
5 State law expressly mandated for the initiative and referendum process.
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10 **Other Irregularities Support the Fact that Fraud-Prevention Measures Are Critical**

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12 32. While the SOS has conducted 57 signature verifications since 1990, only
13 three others have been 100% manual checks, rather than by sample. Because so few
14 signatures were turned in, SOS had to examine every signature, not completing the process
15 until September 2nd. During the check, SOS staff compared signatures on petitions to
16 signatures on file in the statewide voter registration database to determine if each signature
17 was that of a registered voter, as required by State law.
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24 33. The signature verification process for Referendum 71 began the week of
25 July 27, 2009. To conduct the signature verification process, the SOS hired approximately
26 30 signature checkers ("initial checkers") and eight "master checkers." The verification was
27 conducted in two daily shifts, the first running from 7:30 am to 3:30 pm, and the second
28 running from 3:30 p.m. to 10:00 p.m.
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34 34. Initial checkers are temporary employees who receive approximately two
35 hours of training before beginning their first shift. An initial checker uses his or her
36 computer terminal to locate each signer in the statewide voter registration database. The
37 signature is rejected as "not found" if the voter is not located (i.e., because the signer is not a
38 registered voter).
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44 35. So-called "master checkers," who are generally more experienced, review all
45 signatures rejected by initial checkers. Depending on the reason for the initial rejection,
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1 master checkers determine whether an individual signer is, in fact, a registered voter.
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3 Master checkers review only rejected signatures. If the master checker also cannot locate an
4 individual in the statewide voter registration database, the master checker affirms the
5 decision to reject the signature on the basis of "not found." Master checkers do not review
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7 any signatures *accepted* by initial checkers. Thus, for signatures initially determined to be
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9 valid, there is no level of review after the first line checker, regardless of whether the
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11 signatures or the address may have been assessed as a match in error.
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15 36. Under RCW 29A.72.230, interested parties are permitted to have at least two
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17 observers present at all stages of the signature check process. The Secretary originally
18
19 permitted Washington Families and PMW the bare minimum—two observers each.
20
21 Eventually, the Secretary permitted each side an additional observer. After the SOS added
22
23 the third layer of review for *rejected* signatures, each side was allowed five observers (two
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25 of whom were to be specifically devoted only to observing the new layer of review of the
26
27 "live" database, which only applied to rejected signatures).
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29 37. Observers from Washington Families and PMW were present throughout the
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31 verification process. Washington Families trained more than 70 volunteer observers.
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33 Washington Families reviewed the SOS guidelines with each observer, and provided a lead
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35 observer for each shift to help answer questions and provide a single point of contact with
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37 SOS staff. Washington Families directed its teams of observers to comply with all
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39 procedural rules developed by the SOS, including not interacting with checkers, and not
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41 writing down names or contact information from the petitions.
42

43 38. Guidelines published by the SOS instruct observers to speak to SOS
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45 supervisors about observed errors, but do not require the supervisor to address the concern
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47 or take any action. During the first week of the verification, Washington Families lead

1 observers asked supervisors how to handle issues that they or other Washington Families
2 observers had witnessed. They were advised to record the issues and raise them at a later
3 time. It quickly became apparent that SOS supervisors could not address each of the many
4 observed issues as they arose without seriously disrupting the process. Accordingly,
5 Washington Families directed its teams to record all issues so that Washington Families
6 could present SOS staff with collections of problems that would allow the SOS to review the
7 issues more efficiently.
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15 39. Washington Families observers identified numerous signatures that they
16 believed were accepted in error, including for instance situations where the signatures and
17 addresses did not appear to match the signature on file in the voter registration database,
18 signatures where a single individual appeared to have signed on behalf of several other
19 people, signatures that were crossed out, signatures where the first name or middle initial
20 was different than that in the voter registration database, and signatures where the signature
21 on file in the voter registration database was spelled differently than the name on the
22 petition. The SOS re-reviewed 222 signatures that Washington Families observers noted as
23 having suspected errors. This re-review resulted in the discovery that 13% (29 of 222) had
24 been accepted in error and should have been rejected. However, when Washington Families
25 made requests that the SOS re-review additional similar errors that its observers spotted, the
26 SOS refused. The SOS also made clear that any further requests would not be entertained.
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39 40. Given that it was recognized from the start that the signature tally would be
40 very close to the minimum required to get the referendum on the ballot, given the lack of
41 any regular double-check on accepted signatures, and in light of the 13% error rate on the
42 222 signatures that were re-checked, the Secretary has acted arbitrarily and capriciously in -
43 not considering errors seen by the observers or otherwise establishing a means of addressing
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1 such issues, and thereby including these signatures in those being counted as valid for
2
3 purposes of qualifying the referendum for the ballot.

4
5 41. Washington Families observers have diligently recorded numerous instances
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7 where they believe signatures were accepted in error, but the Secretary afforded no process
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9 to have these issues addressed. The reason State law requires that observers be allowed to
10
11 view the verification check is to ensure that the verification is conducted consistent with
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13 State law and to instill public confidence in the result. By instructing Washington Families
14
15 to record issues and potential errors without providing any avenue to have them redressed,
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17 the Secretary has defeated the very purpose of allowing observers in the first instance.

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19 42. To further compound this arbitrary and capricious refusal to re-review issues
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21 seen and noted by the observers, as a result of legal action initiated by PMW purportedly to
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23 protect supporters of the referendum from harassment, PMW has effectively prevented
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25 Washington Families from conducting its own investigation into the validity of accepted
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27 signatures about which its observers have noted issues. The temporary restraining order
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29 entered by the federal district court at PMW's request will remain in effect until at least
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31 September 3, 2009, making it impossible, or at least virtually so, for Washington Families to
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33 conduct an investigation of suspect signatures before the deadline stated by the Secretary
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35 (September 10) for preparing the ballots.

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37 43. Washington State has an important and longstanding public disclosure policy
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39 that includes public disclosure of finance contributions and expenditures, as well as public
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41 disclosure of records such as the signatures on referenda petitions. The public disclosure of
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43 the signature-gatherers for such petitions is an integral part of this policy, especially since
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45 Washington now allows for the use of paid signature-gatherers. This policy serves to
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47 enhance public confidence and trust by promoting transparency and avoiding secrecy in

1 government. The proponents of Referendum 71 have defied this policy by affirmatively
2 seeking to avoid publicly disclosing their financial contributors, the referendum signatures,
3 and any information regarding their signature-gatherers, including how much was paid and
4 to whom. This conduct has also precluded Plaintiffs from investigating errors made by the
5 Secretary in accepting signatures.
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10 44. Nevertheless, Washington Families submits that there already is sufficient
11 evidence that a thorough investigation of accepted signatures would, more likely than not,
12 result in a reversal of the Secretary's decision to certify Referendum 71. By the Secretary's
13 count, the referendum exceeded the minimum number of required signatures by a mere
14 1,430 signatures. However, despite being able to observe only about 20% of the SOS's work
15 (because Washington Families was permitted only 3 observers watching all of the front line
16 reviewers), those observers indicated that they saw approximately 3,000 signatures that they
17 would want re-reviewed for the same type of issues as the 222 that were re-checked. Since
18 the observers only were able to watch one-fifth of the process, it is fair to extrapolate that
19 15,000 signatures accepted would require the same more careful analysis. Assuming the
20 same 13% failure rate as was determined from the 222 signatures that were re-reviewed
21 would mean that a total of approximately 1,950 accepted signatures should have been
22 rejected.
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37 **FIRST CAUSE OF ACTION**
38 **INJUNCTION PURSUANT TO RCW 29A.72.240**
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41 45. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
42 each of the allegations in all previous paragraphs.
43

44 46. Under RCW 29A.72.240, any citizen dissatisfied with the determination of
45 the Secretary that a referendum petition does not contain the requisite number of signatures
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1 of legal voters may, within five days after such determination, apply to this Court for an
2 injunction preventing the referendum from being placed on the ballot.
3

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5 47. The Secretary has asserted that an action pursuant to RCW 29A.72.240 is the
6 appropriate vehicle to consider Plaintiffs' challenge to the Secretary's inclusion of petitions
7 that did not have a completed declaration of the signature-gatherer or where someone other
8 than the signature-gatherer completed the declaration; the Secretary's determination that he
9 would include in the count individuals who registered to vote after they signed the petition;
10 and the Secretary's erroneous acceptance of signatures as matches to the signatures of record
11 for registered voters.
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19 48. For the reasons stated herein, Plaintiffs are entitled to an injunction
20 preventing placement of Referendum 71 on the ballot. Defendant Secretary has improperly
21 accepted petitions where the Required Oath is unexecuted or signed by an individual who
22 did not personally circulate the petition, or signed by an individual other than the named
23 declarant. Defendant Secretary has also accepted signatures where individuals are not legal
24 voters at the time of signing. Defendant Secretary has also accepted signatures that do not
25 match to the signatures of record for registered voters or otherwise are not indicative that the
26 registered voter actually signed the petition.
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35 **SECOND CAUSE OF ACTION**
36 **ORDER TO DELIVER PETITIONS PURSUANT TO RCW 29A.72.240**
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39 49. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
40 each of the allegations in all previous paragraphs.
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43 50. Under RCW 29A.72.240, any citizen dissatisfied with the determination of
44 the Secretary that a referendum petition does not contain the requisite number of signatures
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1 of legal voters may, within five days after such determination, apply to this Court for a
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3 citation requiring the Secretary to submit the petition to the Court for examination.
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5 51. Implicit in the statutory requirement that the petition be submitted to the
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7 Court for examination is that the Secretary also deliver to the Court other necessary
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9 information to conduct this examination. This would include at a minimum that
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11 arrangements must be made to get the Court access to information in the Secretary's control
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13 that was used during the Secretary's verification process, including registration rolls, checker
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15 logs and signature records of the registered voters.
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17 52. Also implicit in the statutory requirement that the petition be submitted to the
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19 Court for examination is that the parties too will have access to the petitions and the other
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21 evidence submitted to the Court, as the process before the Court is necessarily an advocacy
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23 proceeding.
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25 53. For the reasons stated herein, Plaintiffs are entitled to an order requiring the
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27 Secretary to immediately deliver the petitions to the Court for examination by the Court and
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29 the parties.
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31 54. The petitions that the Secretary reviewed were scanned so that a digital image
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33 exists of each. Plaintiffs submit that the order to the Secretary should specify that the
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35 Secretary deliver both the paper originals and a digital version to the Court and provide the
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37 parties with access to the digital images directly as well.
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39 55. Plaintiffs further submit that the order to the Secretary should also specify
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41 that the Secretary provide the Court and the parties with access to all the information in the
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43 Secretary's control used during the verification process.
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THIRD CAUSE OF ACTION
DECLARATORY RELIEF

56. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each of the allegations in all previous paragraphs.

57. For reasons including those stated herein, an actual dispute exists between the Plaintiffs and the Defendants, and the parties have genuine and opposing interests, which interests are direct and substantial, and of which a judicial determination will be final and conclusive.

58. Plaintiffs are, therefore, entitled to a judgment that, as a matter of law, (1) the Required Oath must be executed by the signature-gatherer, (2) petitions submitted with an unexecuted Required Oath are not in the form required by RCW 29A.72.130; (3) petitions submitted with a Required Oath signed by an individual who did not personally circulate the petition, as well as those signed by an individual other than the named declarant, violate State law and are not in the form required by RCW 29A.72.130; and (4) the SOS cannot count petitions with an unsigned or deficient Required Oath toward the number of legal voter signatures necessary to qualify Referendum 71 for the ballot, as well as any further relief that may follow from the entry of such declaratory judgment.

59. Plaintiffs are further entitled to a judgment that, as a matter of law, the signature of an individual who is not a legal voter at the time he or she signs the petition is invalid and cannot be counted toward the number necessary to qualify a referendum for the ballot.

FOURTH CAUSE OF ACTION
WRIT OF MANDAMUS: UNVERIFIED PETITIONS

60. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each of the allegations in all previous paragraphs.

61. Under the Constitution and RCW 7.16, the Court may issue a writ of mandamus to any person to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station where there is no plain, speedy, and adequate remedy in the ordinary course of law.

62. The Unverified Petitions did not contain a statutorily-mandated safeguard against fraud and forgery in the signature-gathering process, and thus do not contain critical information required by RCW 29A.72.130. The Unverified Petitions are not in substantial compliance with RCW 29A.72.130, and RCW 29A.72 requires the Secretary to reject such noncompliant petitions.

63. Plaintiffs possess an interest in the granting of the writ of mandamus beyond that shared by other citizens.

64. For reasons including those listed herein, Plaintiffs lack a plain, speedy, and adequate remedy in the ordinary course of law.

65. Plaintiffs are entitled to a writ of mandamus requiring the Defendant to determine that the Unverified Petitions do not contain the information required by RCW 29A.72.130, and further requiring him to reject such petitions and not count the signatures thereon toward the number necessary to qualify Referendum 71 for the ballot.

FIFTH CAUSE OF ACTION
WRIT OF MANDAMUS: UNREGISTERED VOTERS

66. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each of the allegations in all previous paragraphs.

67. Under the Constitution and RCW 7.16, the Court may issue a writ of mandamus to any person to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station where there is no plain, speedy, and adequate remedy in the ordinary course of law.

68. The Secretary is especially tasked with verifying that signatures on referenda petitions are those of voters registered at the time each individual signed the petition. Contrary to RCW 29A.72.130 and Wash. Const. Art. II § 1(b), the Secretary has arbitrarily instructed his staff that it should accept signatures without regard to the date of voter registration.

69. An individual who is not registered as of the date he or she signs a referendum petition is not a legal voter.

70. Plaintiffs possess an interest in the granting of the writ of mandamus beyond that shared by other citizens.

71. For reasons including those listed herein, Plaintiffs lack a plain, speedy, and adequate remedy in the ordinary course of law.

72. Plaintiffs are entitled to a writ of mandamus requiring the Secretary to reject signatures of voters who were not registered at the time they signed the petition. Specifically, Plaintiffs are entitled to a writ of mandamus requiring the Secretary to reject signatures of voters who were not registered as of the filing date of July 25, 2009.

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SIXTH CAUSE OF ACTION
WRIT OF PROHIBITION: UNVERIFIED PETITIONS

73. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each of the allegations in all previous paragraphs.

74. Under the Constitution and RCW 7.16, the Court may issue a writ of prohibition to any person to arrest the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person where there is no plain, speedy, and adequate remedy in the ordinary course of law.

75. The Unverified Petitions did not contain a statutorily-mandated safeguard against fraud and forgery in the signature-gathering process, and thus do not contain information required by RCW 29A.72.130. The Unverified Petitions are not in substantial compliance with RCW 29A.72.130, and the Secretary cannot accept such noncompliant petitions under RCW 29A.72.

76. For reasons including those listed herein, Plaintiffs lack a plain, speedy, and adequate remedy in the ordinary course of law.

77. Plaintiffs are entitled to a writ of prohibition preventing the Defendant from including signatures contained on Unverified Petitions toward the number necessary to qualify Referendum 71 for the ballot.

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SEVENTH CAUSE OF ACTION
WRIT OF PROHIBITION: UNREGISTERED VOTERS

78. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each of the allegations in all previous paragraphs.

1 79. Under the Constitution and RCW 7.16, the Court may issue a writ of
2 prohibition to any person to arrest the proceedings when such proceedings are without or in
3 excess of the jurisdiction of such person where there is no plain, speedy, and adequate
4 remedy in the ordinary course of law.
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8 80. The SOS is especially tasked with verifying that signatures on referenda
9 petitions are those of voters registered at the time each individual signed the petition.
10 Contrary to RCW 29A.72.130 and Wash. Const. Art. II § 1(b), the Secretary has arbitrarily
11 instructed its staff that it should accept signatures without regard to the date of registration.
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15 81. An individual who is not registered as of the date he or she signs a
16 referendum petition is not a legal voter.
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20 82. For reasons including those listed herein, Plaintiffs lack a plain, speedy, and
21 adequate remedy in the ordinary course of law.
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25 83. Plaintiffs are entitled to a writ of prohibition requiring the Secretary to reject
26 signatures of voters who were not registered at the time they signed the petition.
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30 **EIGHTH CAUSE OF ACTION**
31 **ARBITRARY AND CAPRICIOUS ACTION: UNVERIFIED PETITIONS**
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34 84. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
35 each of the allegations in all previous paragraphs.
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38 85. The Secretary has knowingly accepted over 2,600 petitions containing over
39 35,000 signatures, some of which have declarations that were not signed at all and others of
40 which were signed by an individual who did not circulate the petition and has no personal
41 knowledge of the facts contained in the Required Oath and still others by someone other
42 than the named declarant.
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1 86. In accepting these petitions, and counting a material number of the signatures
2 contained therein toward the number necessary to qualify Referendum 71 for the ballot, the
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4
5 SOS is acting without authority of law and in a judicial or quasi-judicial manner.
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7 87. The Secretary's action in accepting petitions that contain nugatory
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9 declarations that cannot serve their intended purpose, and in counting a material number of
10 the signatures contained therein toward the number necessary to qualify Referendum 71 for
11 the ballot is arbitrary and capricious, and is a willful and unreasoning action, taken without
12 consideration and in disregard of facts or circumstance.
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15 88. Pursuant to the Court's authority to review agency decisions for arbitrary and
16
17 capricious action, Plaintiffs are entitled to a writ of mandamus, prohibition, or certiorari
18 preventing the Secretary from accepting the Unverified Petitions and counting the signatures
19 contained therein toward the number necessary to qualify Referendum 71 for the ballot.
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26 **NINTH CAUSE OF ACTION**
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28 **ARBITRARY AND CAPRICIOUS ACTION: UNREGISTERED VOTERS**
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30 89. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
31 each of the allegations in all previous paragraphs.
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33 90. In the face of express Constitutional and statutory provisions stating that only
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35 legal voters may sign referenda petitions, the Secretary has specifically instructed his staff to
36 count signatures of unregistered voters toward the total necessary to qualify Referendum 71
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38 for the ballot.
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41 91. In accepting these petitions, and counting a material number of the signatures
42 contained therein toward the number necessary to qualify Referendum 71 for the ballot, the
43
44 SOS is acting without authority of law and in a judicial or quasi-judicial manner.
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92. Defendant's action in accepting signatures of individuals that it knows were not registered at the time the petition was signed is arbitrary and capricious, and is a willful and unreasoning action, taken without consideration and in disregard of facts or circumstance.

93. Pursuant to the Court's authority to review agency decisions for arbitrary and capricious action, Plaintiffs are entitled to a writ of mandamus, prohibition, or certiorari preventing the Secretary from counting the signatures of unregistered voters toward the number necessary to qualify Referendum 71 for the ballot.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. For an Order directing Defendant Secretary to deliver all petitions to the Court, in paper and electronic form, and all information used by the Secretary during the verification process, and also provide the parties with access to the petitions and the other information.

B. For an Order enjoining Defendant Secretary from placing Referendum 71 on the General Election ballot.

C. For entry of judgment that as a matter of law (1) Unverified Petitions do not contain the information required by RCW 29A.72.130, and thus do not comply with State law; and (2) that the Secretary cannot count signatures on Unverified Petitions toward the total necessary to qualify Referendum 71 for the ballot.

D. For entry of judgment that as a matter of law (1) the signature of a voter who was not registered at the time he or she signed the petition is not the signature of a "legal voter"; (2) the signature of a voter who was not registered as of the filing date for

1 Referendum 71 is not the signature of a "legal voter"; and (3) the signatures of individuals
2 who are not legal voters cannot be counted toward the total necessary to qualify
3
4 Referendum 71 for the ballot.
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6 E. For a statutory writ of mandamus directing the Secretary to reject all
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8 signatures contained on Unverified Petitions, as well those of individuals who are not legal
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10 voters.
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12 F. For a statutory writ of prohibition preventing the Secretary from including
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14 signatures on Unverified Petitions and signatures of individuals who are not legal voters
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16 toward the total necessary to qualify Referendum 71 for the ballot.
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18 G. For a writ of mandamus, prohibition, or certiorari preventing the Secretary
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20 from including signatures on Unverified Petitions and signatures of individuals who are not
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22 legal voters toward the total necessary to qualify Referendum 71 for the ballot.
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24 H. For Plaintiffs' costs of suit; and
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26 I. For such other relief as the Court may deem just and proper.
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31 DATED: September 3, 2009

PERKINS COIE LLP

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33
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35 By: 

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